

Deed of Variation

Varying an Agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 22 March 2012 relating to land at Courtwick, Littlehampton, West Sussex

Between:

- (1) BDW Trading Limited
- (2) Bellway Homes Limited
- (3) The Courtwick Partnership LLP
- (4) Arun District Council
- (5) [West Sussex County Council]

Dated 2013

Osborne Clarke

One London Wall
London
EC2Y 5EB
Telephone
Fax



NDA/1003438/18570233.1/KZP

BETWEEN

- (1) **BDW TRADING LIMITED** whose registered office is at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("**the First Owner**")
- (2) **BELLWAY HOMES LIMITED** whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne (Company registration number 00670176) ("**the Second Owner**")
- (3) **THE COURTWICK PARTNERSHIP LLP** whose registered office is at The Ark, 201 Telgarth Road, London W6 8BJ (Company registration number OC336241) ("**the Chargee**")
- (4) **ARUN DISTRICT COUNCIL** of Arun Civic Centre, Maltravers Road, Littlehampton, West Sussex BN17 5LF ("**the District Council**")
- (5) [**WEST SUSSEX COUNTY COUNCIL**, of County Hall, West Street, Chichester, West Sussex PO19 1RG ("**the County Council**")]

RECITALS:

1. On 22 March 2012 The District Council, The Country Council, The Chargee and Gleeson Developments Limited entered into an agreement under section 106 of the Town and Country Planning Act 1990 relating to land at Courtwick, Littlehampton, West Sussex (the "**Principal Agreement**").
2. On 10 September 2012 the First Owner and the Second Owner jointly acquired the freehold of the land registered at HM Land Registry under title number WSX352797 which forms the Site subject to the provisions of the Principal Agreement subject to a registered charge dated 10 September 2012 ("**the Charge**") in favour of the Chargee.
3. The First Owner, The Second Owner, The District Council [and The County Council] agree that the obligations in relation to highway works in the Principal Agreement should be amended as set out in this Deed.
4. The First Owner, the Second Owner, the District Council [and the County Council] acknowledge that the obligations contained in the Principal Agreement as varied by this Deed are planning obligations for the purposes of Section 106 of the Town and Country Planning Act 1990 (as amended) and that the District Council [and the County Council] is the local planning authority by whom those obligations are enforceable.

NOW THIS DEED WITNESSES as follows:-

1. Definitions

- 1.1 All words, phrases and interpretations defined or specified in the Principal Agreement shall have the same meaning in this Deed save where otherwise provided or where the context otherwise requires and they shall be construed as if set out in this Deed.

2. Legal effect

- 2.1 This Deed is made under section 106 and section 106A of the Town and Country Planning Act 1990 (as amended) and the other enabling provisions specified in the Principal Agreement and shall take effect on the date first written.

3. Variation

- 3.1 Schedule 9 to the Principal Agreement is amended as follows:

- (a) Paragraph 1(b) is deleted.
- (b) In Paragraph 1(d) "ITB 3164 – GA/009" is deleted and replaced with "ITB3164 – GA-006 REV C"
- (c) In Paragraphs 2 and 3 the words "other than the New Courtwick Lane Works" shall be inserted between the words "provision of the Highway Works" and "to the satisfaction of the County Council".
- (d) The words in paragraph 5 are deleted and replaced with the following:

"The owner covenants with the District Council and the County Council:

 - (a) to enter into a Section 278 agreement with the County Council prior to commencing works on the Employment Land to secure the provision of the New Courtwick Lane Works to the satisfaction of the County Council;
 - (b) not to commence works on the Employment Land until the Owner has entered into a Section 278 agreement to secure the provision of the New Courtwick Lane Works to the satisfaction of the County Council"
- (e) In paragraph 6 the word "Development" is deleted and replaced with the words "Employment Land."
- (f) The words in paragraph 9 are deleted and replaced with the following:

"The County Council covenants with the Owner to enter into a Section 278 agreement:

(a) in relation to the Highway Works other than the New Courtwick Lane Works prior to the Commencement of the Development in order to secure the provision of the Highway Works other than the New Courtwick Lane Works required in support of the Development;

(b) in relation to the New Courtwick Lane Works prior to the commencement of works on the Employment Land in order to secure the provision of the New Courtwick Lane Works required in support of the Employment Land"

- 3.2 In Appendix 3 to the Principal Agreement the plan reference number ITB3164 – GA – 003 REV A and any reference to it is deleted.

4. Chargee

- 4.1 The Chargee agrees to the terms of this Deed and acknowledges that the Site is bound by the restrictions and obligations imposed by this Deed PROVIDED THAT the Chargee shall only be bound by the obligations imposed by this Deed if it shall act as a Mortgagee in possession of the Site but not further or otherwise.

5. Waiver

- 5.1 No Waiver (whether express or implied) by the District Council [or the County Council] of any breach or default by the First Owner or the Second Owner in performing or observing any of the obligations arising from the Principal Agreement or this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council [or the County Council] from enforcing any of the obligations or from acting upon any subsequent breach or default of them by the First Owner or the Second Owner.

6. Miscellaneous

- 6.1 Nothing in this Deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 6.2 Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the District Council [or the County Council] in the exercise of its functions as local planning authority and its rights, powers, duties and obligations under all public and private statutes, byelaws and regulations.
- 6.3 Except as varied by this Deed, all the obligations arising under the Principal Agreement shall remain in full force and effect and from the date of this Deed and the Principal Agreement shall take effect as varied by this Deed.

.7. Costs

- 7.1 The First Owner and the Second Owner agree to pay the District Council's [and the County Council's] reasonable legal fees and costs incurred in the negotiation, preparation and execution of this Deed on completion of this Deed.

IN WITNESS of which the parties to this Deed have executed this document as a deed on the date first written.

EXECUTED as a DEED by
BDW TRADING LIMITED

Acting by two Directors or one Director and the Secretary:

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Director

.....

Director/Secretary

EXECUTED as a DEED by

BELLWAY HOMES LIMITED

Acting by two Directors or one Director and the Secretary:

.....

Director

.....

Director/Secretary

EXECUTED as a **DEED** by

THE COURTWICK PARTNERSHIP LLP

Acting by two Directors or one Director and the Secretary;

.....

Director

.....

Director/Secretary

EXECUTED AS A DEED BY AFFIXING

THE COMMON SEAL OF THE

ARUN DISTRICT COUNCIL

in the presence of:

.....

Authorised Signatory

.....

Authorised Signatory

[EXECUTED AS A DEED BY AFFIXING

THE COMMON SEAL OF THE

WEST SUSSEX COUNTY COUNCIL]

in the presence of:

.....

Authorised Signatory

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✓ Authorised Signatory